

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL KENNETH CONKLIN,

Defendant-Appellant.

UNPUBLISHED

May 7, 1999

No. 205691

Iosco Circuit Court

LC No. 96-003204 FC

96-003205 FH

96-003206 FC

96-003207 FH

96-003208 FH

96-003209 FH

96-003210 FH

96-003213 FH

96-003215 FH

96-003216 FH

96-003217 FH

96-003218 FH

96-003219 FH

96-003220 FH

96-003221 FH

96-003222 FC

96-003223 FH

96-003224 FH

96-003225 FH

96-003239 FH

Before: Kelly, P.J., and Neff and Smolenski, JJ.

PER CURIAM.

Defendant pleaded guilty to three counts of safe breaking, MCL 750.531; MSA 28.799, one count of attempted breaking and entering a building with the intent to commit larceny, MCL 750.110; MSA 28.305; MCL 750.92; MSA 28.287, eight counts of breaking and entering a building with intent to commit larceny, MCL 750.110; MSA 28.305, six counts of second-degree home invasion, MCL

750.110a; MSA 28.305(a), and one count of escape while awaiting trial, MCL 750.197; MSA 28.394. Defendant also pleaded nolo contendere to one additional count of second-degree home invasion. The trial court sentenced defendant to concurrent terms of thirty-five to seventy years' imprisonment on the safe breaking convictions, of forty to sixty months' imprisonment on the attempt conviction, of eight terms of 80 to 120 months' imprisonment on the breaking and entering convictions and of seven terms of ten to fifteen years' imprisonment on the home invasion convictions. The court also imposed a consecutive term of thirty-two to forty-eight months' imprisonment on the escape conviction. A motion for resentencing was denied by the trial court. Defendant appeals by leave granted. We affirm. These cases are being decided without oral argument pursuant to MCR 7.214(E).

First, defendant contends that the trial court erred when it used the armed robbery guidelines to sentence him. Although the trial court erred when it scored the safe breaking convictions using the armed robbery guidelines and when it scored the home invasion convictions using the breaking and entering guidelines, *People v Hill*, 221 Mich App 391, 397 n 2; 561 NW2d 862 (1997); *People v Douglas (On Remand)*, 191 Mich App 660, 665; 478 NW2d 737 (1991); *People v Laube*, 155 Mich App 415, 417; 399 NW2d 545 (1986), these errors do not require resentencing. The trial court did not impose sentence in these cases in reliance on these guidelines, even though it did note the guidelines recommendations. The trial court explained that it intended to impose the maximum sentences possible for the home invasion convictions in light of defendant's extensive criminal record, the number of criminal offenses committed in the crime spree giving rise to the instant convictions, defendant's lack of remorse and the benefit defendant received from the plea agreement. The court also explained that it was rejecting the guidelines for armed robbery as wholly inadequate in light of the foregoing considerations and then it imposed minimum sentences on the safe breaking convictions well outside the guidelines range for armed robbery.

Second, defendant contends that he should be resentenced because his sentence of thirty-five to seventy-years' imprisonment is disproportionate under the circumstances of the case and constitutes cruel and unusual punishment as prohibited by Const 1963, art 1, § 16 and US Const, Am VIII. We disagree. Defendant's thirty-five-year minimum sentences do not violate the principle of proportionality in light of defendant's extensive criminal record, the extent of the crime spree that gave rise to the instant convictions, his lack of remorse and the benefits bestowed upon defendant by the terms of the plea agreement, which included the dismissal of additional charges and the foregoing of the enhancement of each of defendant's sentences to reflect defendant's status as a fourth habitual offender. *People v Dixon*, 217 Mich App 400, 411-413; 552 NW2d 663 (1996); *People v Ward*, 206 Mich App 38, 44-45; 520 NW2d 363 (1994). In addition, because the sentences are not disproportionate in relation to the offenses, they are not cruel or unusual. *People v Williams (After Remand)*, 198 Mich App 537, 543; 499 NW2d 404 (1993). See also *People v Ferguson(After Remand)*, 60 Mich App 302, 306-307; 230 NW2d 406 (1975), in which this Court held that the sentencing provision of MCL 750.531; MSA 28.799 did not constitute cruel and unusual punishment, because by allowing the trial court to sentence a

defendant to life imprisonment or any term of years, the statute gives the court “wide discretion to consider the facts of the particular case upon sentencing.”

Affirmed.

/s/ Michael J. Kelly

/s/ Janet T. Neff

/s/ Michael R. Smolenski